

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

* * * * *

ROBERT J. BURNS,

Appellant,

v.

TRUSTEES, PARK COUNTY SCHOOL
DISTRICT NO. 4 & 1,

Respondent.

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)
) FINDINGS OF FACT,
) CONCLUSIONS OF LAW
) AND ORDER
)
) OSPI 95-85
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This is an appeal from the jurisdiction findings and order of the Park County Superintendent of Schools by Acting County Superintendent Larry Stollfuss rendered on the 12th day of November, 1985.

An appeal was filed by a tenured teacher, Robert J. Burns, on the 3rd day of December, 1935. Appellant seeks to have the same salary which he received by prior contract dated April 13, 1984. Appellant contends he is entitled to "same salary" pursuant to Section (20-4-204) MCA. *This is a mistake, Section 203 gives this authority & 204 throughout means 203*

The Acting County Superintendent determined that he is without jurisdiction in this matter because this matter does not arise within Section 20-3-210 MCA. He further determined that it was not a "school controversy" but one governed by the Collective Bargaining Agreement between the parties.

All parties have submitted briefs and this matter has

been under consideration and is now ready for decision.
This State Superintendent, therefore, makes the following

FINDINGS OF FACT

1. Mr. Robert J. Burns, Appellant, Livingston, Montana, is a tenured teacher in the Livingston school system. During the 1984-85 school year, Appellant had an individual contract with the district which provided a salary of \$23,644.

2. The contract dated April 13, 1984, between Appellant and the school district provided as follows.

(2) that the said school district shall pay to the above-named teacher the sum of twenty three thousand six hundred forty-four and no/100 dollars (\$23,644.00*).

*teaching contract, \$19,730; GBB Head Coach \$2,371; BBB Asst. Coach \$1,543.

3. On March 29, 1985, Appellant was notified of his reelection as a tenured teacher. Appellant had been a tenured teacher in the Park County High School District for seven years.

4. On April 1, 1985, Appellant accepted the reelection as a tenured teacher in the Park County School District.

5. On May 12, 1985, Appellant was notified that his coaching assignment would be terminated at the end of the 1984-85 school year.

6. The record before the State Superintendent is complete pursuant to Section 10.6.118, Administrative Rules of Montana (hereinafter referred to as ARM).

7. The State Board of Public Education and the Montana State Superintendent of Public Instruction do not certify coaches.

8. Coaching "certificates" are not issued by the State of Montana and are not filed with the county superintendent of schools, the Montana Office of Public Instruction or any entity of the State of Montana.

9. Coaches are not subject to enforcement or regulatory proceedings from the State of Montana nor the Montana Office **of** Public Instruction nor the county superintendent regarding their coaching credentials.

10. State law does not require coaches to maintain teacher certification with the county superintendent.

11. Extracurricular coaching duties are not a component of a teacher's assigned teaching duties.

12. A master agreement was entered into between the Board of Trustees of School District No. 4 & 1, Park County, and the Livingston Education Association, Livingston, Montana, 1984-85.

13. Article **II**, Section 2.7 of the parties' master collective bargaining agreement provides:

No teacher shall be reduced in rank or compensation, discharged, or deprived of any professional advantage without just cause. Nothing in this article shall apply to retention or non-retention in Co-curricular duties and other nonteaching assignments nor the renewal or non-renewal of the non-tenured teacher contracts (emphasis supplied).

14. The teacher contract entered into between Appellant and Respondent states in part:

(7) The individual contract is subject to the terms and conditions of the professional agreement between the association and the Board of Trustees and to the extent that the provisions of this contract and said agreement may be inconsistent, the provisions of said agreement shall be controlling.

15. The acting county superintendent determined that he was without jurisdiction in the matter and dismissed the appeal, thereby denying Appellant's claim that his co-curricular activity compensation should be protected under the tenure laws.

From the foregoing findings of fact, this State Superintendent draws these

CONCLUSIONS OF LAW

1. The State Superintendent has jurisdiction pursuant to Section 20-3-107 MCA and Section 10.6.121 et seq. ARM.

2. The matter presented is a "school controversy" under Section 20-3-210 MCA and 10.6.102 ARM and involves an interpretation of Section 20-4-204 MCA.

3. The acting county superintendent committed an error of law when he determined that he did not have jurisdiction in this matter.

4. The acting county superintendent does have jurisdiction to determine a controversy pursuant to Section 10.6.105 ARM and Section 20-3-210 MCA concerning the question of the application of Section 20-4-204 MCA to a tenured teacher's salary.

5. Appellant acquired tenure as a teacher pursuant to

Section 20-4-204 MCA.

6. Under Section 20-4-204 MCA, Appellant was reelected by Respondent to his same position and same salary.

7. The extracurricular duties and activities of Appellant are not a component of his duties as a teacher and are not a component of his salary as a teacher. B.E.A. v. Billings School District; No. 69290, the Thirteenth Judicial District for the State of Montana in and for the County of Yellowstone, January 12, 1978.

8. The teacher's contract entered into on April 13, 1984 distinguished the teacher contract amount of \$19,730 and the co-curricular activities of a basketball coach and the respective compensation amounts for the co-curricular activities of \$2,371 and \$1,543.

9. Coaching positions are not positions in which a person may attain tenure under the statutes of the State of Montana.

10. The compensation of coaching responsibilities are not protected within the "same salary" component of Section 20-4-204 MCA.

11. The Montana Supreme Court, in its recent decision in Bartmess v. Trustees of Helena School District No. 1, Cause No. 85-540, decided September 20, 1986, determined that participation in extracurricular activities is not a fundamental right guaranteed by the Montana Constitution.

12. Neither the State of Montana, Board of Public

Education nor the State Superintendent of Public Instruction keep records of coaching certificates or other credentials which would allow a person to coach.

13. The ruling of the Montana Supreme Court in Bartmess, supra, further distinguishes extracurricular activities from classroom instruction.

14. The teacher contract listed as Exhibit D, and made a part of this record, clearly distinguishes compensation for a teacher's contract from those of the other coaching activities.

15. The individual teacher's contract further states that the individual contract is subject to the terms and conditions of the professional agreement between the association and the board of trustees; to the extent that the provisions of this contract and said agreement may be inconsistent, the provisions of said agreement shall be controlling.

16. The controlling provision of the allegations raised by Appellant herein is found in Article II, Section 2.7 in the master agreement which restates the basic tenure rule and provides that the stipend for co-curricular assignments is a percentage, not of the teacher's own salary, but of the base salary provided by the overall teacher's salary schedule. The contract language itself establishes that co-curricular assignments are governed solely by the collective bargaining terms and not by the tenure laws and, therefore,

do not come within the definition of "same salary" of Section 20-4-204 MCA.

1 17. Extracurricular coaching duties for which the
2 teacher received compensation here and which were set forth
3 in his individual contract are not a component of the
4 position of the tenured teacher under Section 20-4-204 MCA
5 as set forth in Sorlie v. School District No. 2 Mont.
6 , 667 P.2nd, 40 St. Rptr. 1070 (1983); see also Article
7 **II**, Section 2.7 of the master agreement.

8 18. The salary to which Section 20-4-204 MCA applies is
9 a salary for the teaching duties which the Appellant
10 provided the district. Section 20-4-204 MCA does not
11 protect any extracurricular activity assignments or that
12 compensation provided to a teacher for such extra-
13 curricular, nonteaching assignments.

14 19. The State Superintendent, on review of the county
15 superintendent's order, may reverse or modify the decision
16 if substantial rights of the Appellant have been prejudiced
17 on account of error of law. (Section 10.6.125 ARM.)

18 20. Appellant is not entitled to a salary beyond the
19 same salary of \$19,734 which is protected by Section
20 20-4-204 MCA, plus such increments negotiated for the
21 teaching assignment or advancement on the salary schedule
22 which are not within this record.

23 21. The teacher is not entitled to and is hereby denied
24 the claim of "same salary" for "extracurricular activities"
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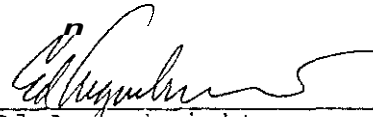
or "co-curricular activities" or the compensation for those services.

From the foregoing Findings of Fact and Conclusions of Law, this State Superintendent enters the following

ORDER

The decision of the Acting County Superintendent of Schools is reversed in part and modified in part in conformance with this opinion.

Dated this 26th day of November, 1986.


Ed Argenbright
State Superintendent

co/601

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on the 1st day of ^{December}~~November~~, 1986,
a true and exact copy of the foregoing Findings of Fact,
Conclusions of Law and Order was mailed, postage prepaid, to:

Emilie Loring
121 4th Street No., Suite 2G
Great Falls, Montana 59401

Laurence R. Martin
P. O. Box 2558
Billings, Montana 59103-2558

Sonja Spannring
County Superintendent
Park County
Courthouse
Livingston, Montana 59047

Larry Stollfuss, Hearing Officer
Chouteau County Superintendent of Schools
Courthouse
Fort Benton, Montana 59442

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Diane Kielblock
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Office of Public Instruction